

Sales of canned software are taxable retail sales. Maintenance agreements are dependent upon contractual terms. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

April 16, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 20, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am looking for clarification on whether or not software support and maintenance is taxable. I have reviewed your Publication 104 -- Common Sales Tax Exemptions and believe support and maintenance is not taxable as it is not 'tangible personal property.' Is this correct and is there a publication that addresses this more specifically?

In general, service and maintenance agreements that cover computer software and hardware are treated the same as maintenance agreements for other types of tangible personal property. The taxability of maintenance agreements is dependent upon whether the charges for the agreements are included in the selling price of tangible personal property. If the charges for the maintenance agreements are included in the selling price of tangible personal property, those charges are part of the gross receipts of those retail transactions and are subject to tax. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sales of those agreements are not taxable transactions. However, when maintenance services or parts are provided under those maintenance agreements, the service or repair companies will be acting as service providers under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when service providers enter into agreements to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, those service providers incur Use Tax based upon their cost price of tangible personal property transferred to the customers incident to the completion of the maintenance services. See part (3) of subsection (b) of the enclosed copy of 86 Ill. Adm. Code 140.301.

Please note that if a software maintenance agreement provides for updates of canned software, and those updates are not separately stated and taxed, the entire maintenance agreement is taxable as a sale of canned software.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

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